



RULES OF THE STATE PERSONNEL BOARD

478-1-.26 Adverse Actions for Classified Employees

(1) Introduction:

Adverse action is defined as a disciplinary action taken by an Appointing Authority which results in the suspension without pay, demotion, reduction in salary, or dismissal of a classified employee. It does not include action resulting from Reduction in Force, insufficient funds, decrease in funds, or change in departmental needs. Except as set forth in provision (11) of this Rule, an employee against whom an adverse action is proposed shall be provided;

- (a) At least fifteen (15) calendar days advance written notice of the proposed action stating the specific charges or reasons for which the action is to be taken;
- (b) A reasonable time in which to refute such charges; and
- (c) Written determination of the final action.

(2) Applicability:

This Rule applies only to employees in the classified service as defined in Rule 478-1-.02 (Terms and Definitions).

(3) Reasons for Adverse Actions:

An Appointing Authority may take adverse action against an employee because of:

- (a) negligence or inefficiency in performing assigned duties;
- (b) inability or unfitness to perform assigned duties;
- (c) insubordination;
- (d) misconduct;
- (e) conduct reflecting discredit on the department;
- (f) commission of a felony or other crime involving moral turpitude;
- (g) chronic tardiness or absenteeism; or,
- (h) failure to report for or remain at work without justifiable cause.

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(4) Types of Adverse Action:

(a) Suspension Without Pay:

The Appointing Authority may suspend an employee without pay for disciplinary reasons specified in provision (3) of this Rule or for pending criminal court action when such pending criminal court action may deter the employee's effectiveness in employment.

1. A suspension without pay for disciplinary purposes should be proportional to the offense and shall not exceed thirty (30) calendar days for any one offense, or for multiple offenses arising out of the same incident.
2. A suspension for pending criminal court action shall not exceed the period of time necessary for the disposition of the action.
3. At the end of a period of suspension without pay for pending criminal action the employee shall be returned to duty or terminated in accordance with other sections of these rules. If the disposition of the criminal action does not include any penalty to the employee, the employee shall be reinstated in accordance with the provisions of Rule 478-1-.27(18)(d)3 (*Appeals and Hearings for Classified Employees*).
4. Prior to suspending a Fair Labor Standards Act (FLSA) exempt employee without pay, the agency should determine whether such action would result in the loss of the FLSA exemption.

(b) Disciplinary Salary Reduction:

The Appointing Authority may reduce an employee's salary for disciplinary reasons specified in provision (3) of this Rule.

1. The reduced salary must remain within the pay range for the employee's job.
2. Prior to reducing an FLSA exempt employee's salary for disciplinary reasons, the agency should determine whether such action would result in the loss of the FLSA exemption.

(c) Demotion:

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1. The Appointing Authority may demote an employee to a job in the classified service on a lower pay grade for which the employee is qualified for any of the reasons specified in provision (3) of this Rule. A demotion for failure to attain permanent status is not an adverse action. (See Rule 478-1-.24 [Working Test and Permanent Status for Classified Employees].)
2. The employee retains classified status in the lower job upon demotion as a result of adverse action.

(d) Dismissal:

The Appointing Authority may dismiss an employee for any of the reasons specified in provision (3) of this Rule.

(5) Notice of Proposed Adverse Action:

The Appointing Authority must give a classified employee written notice of any proposed adverse action at least fifteen (15) calendar days prior to the effective date of the adverse action except for an emergency situation as set forth in provision (11) of this Rule. The notice of proposed adverse action must include the following:

- (a) The effective date of the adverse action which must be at least fifteen (15) calendar days after the date on which the notice of the proposed action is presented to or received by the employee, or properly delivered to the employee's last known address;
- (b) The specific charges or reasons for the adverse action;
- (c) A statement advising that the employee has a right to respond to the charges or reasons in writing, or in person before a named agency official at an agreed upon time during regular business hours, or both, within the response period specified in provision (6) of this Rule;
- (d) A statement advising the employee that a failure to respond to the charges during the response period will result in the action being effective on the date specified without further notice; and,
- (e) A warning that failure to respond by the date set forth in the notice will result in a waiver of all further appeal rights including any appeal to the State Personnel Board under Rule 478-1-.27 (Appeals and Hearings for Classified Employees).

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(6) Employee Response Procedure:

The employee response procedure is created to protect the employee from erroneous or arbitrary adverse action. It is also created to afford the agency an opportunity to re-evaluate its position on proposed adverse actions or forfeiture of position and to affirm or correct if necessary. The procedure does not require a full evidentiary hearing prior to the action. It requires only that the employee be given an opportunity to respond to the charges before a responsible official of the department. The procedure must meet the following minimum requirements:

- (a) The person to whom the response is to be made must be someone who has authority to countermand or delay the proposed action;
- (b) The employee must respond within ten (10) calendar days from the date the notice of proposed action is received. If there is no response by the employee by the date required in the notice of proposed action, the employee waives all further appeal rights. There can be no further appeal, including any appeal to the State Personnel Board;
- (c) The response may be made in writing, or in person, or both;
- (d) The employee may submit affidavits to support the response; and,
- (e) The official who reviews the response may conduct further investigation as to the charges.
- (f) The role of the official who reviews the response is to determine whether the facts support the charge and whether the level of adverse action is appropriate based on a review of adverse actions imposed against employees in the past under similar circumstances.

(7) Determination of Final Action:

The official to whom the response is made shall issue a notice of determination of final action not later than three (3) calendar days after the date of response except as set forth in provision (8) of this Rule. The notice shall include:

- (a) A statement upholding the proposed action, reducing the proposed action, or rescinding the proposed action;
- (b) The specific charges for which the final action is taken;

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- (c) The effective date of the final action, which may not be any earlier than the effective date in the notice of proposed action;
- (d) A statement advising that the employee may appeal this determination to the State Personnel Board pursuant to Rule 478-1-.27 (Appeals and Hearings for Classified Employees) by filing an appeal in writing with the Office of State Administrative Hearings within ten (10) calendar days from the date the employee receives written notice of the final action or decision, or the effective date of the action or decision, whichever is later; and,
- (e) A statement reminding the employee that the ten (10) calendar day appeal period includes Saturdays, Sundays, and holidays.

(8) Extension for Response Official:

If the official to whom the response is made determines that more than three (3) calendar days are needed to consider the employee's response to the proposed action, said official may extend the period of consideration for a reasonable number of days by notifying the employee as to the length of the extension. The extension notice shall also state that the effective date of the proposed action shall be delayed by at least the same number of days as the length of the period of extension for consideration.

(9) Change in the Charges or the Adverse Action:

If the official to whom the response is made determines that charges in addition to, or substantially different from, those enumerated in the Notice of Proposed Adverse Action should be made, or that the adverse action should be more severe than the action specified in the Notice of Proposed Adverse Action, said official shall revoke the proposed adverse action by written notification to the employee. The Appointing Authority may then propose a new action against the employee in accordance with provision (5) of this Rule.

(10) Employment Status During Notice Period:

During a notice period of adverse action an employee is expected to perform assigned duties without disrupting fellow employees or the agency's activities. Any action by the employee to the contrary will be considered an emergency situation as defined in provision (11) of this Rule.

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- (a) The Appointing Authority may by written notice to the employee suspend an employee with pay during the period of notice of proposed adverse action if such suspension is in the best interest of the agency.

(11) Emergency Situations Resulting in Immediate Adverse Action:

- (a) The Appointing Authority may take immediate adverse action against an employee if any of the following circumstances exist:
 - 1. It is likely that the employee has committed a felony or other crime involving moral turpitude;
 - 2. The retention of the employee in active duty status may result in damage to property or may be disruptive, detrimental or injurious to the employee, fellow workers, persons under the employee's charge or the general public; or,
 - 3. Immediate dismissal is required by law.
- (b) The notice of adverse action under this section is the final determination of adverse action and must include the same items required in provision (7) of this Rule. It must also include a statement explaining the emergency situation that caused this section to be invoked.
- (c) If on appeal to the State Personnel Board it is determined that the adverse action was correct but there was no emergency situation, the Board may take appropriate steps necessary to remedy the situation. In the case of a dismissal, such action may include back pay for the normal notice period.
- (d) Immediate adverse action may be invoked only with the approval of the Appointing Authority.
- (e) The emergency provisions of this Rule must not be used to circumvent the notice requirement of this Rule. If an agency is found to have abused these provisions, the Board may suspend the agency's authority to utilize the emergency provisions of this Rule.

Authority:

O.C.G.A. Secs. 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board), O.C.G.A. Secs. 45-20-8 and 45-20-9 (Classified service appeals)